

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Miscellaneous Appeal No. 3719/2007

1. Data Ram S/o Shri Jagan,
2. Smt. Durga D/o Shri Jagan,
3. Geeta D/o Shri Jagan Ahir,
4. Savitri D/o Shri Jagan Ahir,
5. Chhota D/o Shri Jagan Ahir,
6. Para W/o Shri Jagan (Deceased),
 All R/o Khatoli Ahir,
 Thana Chaudhary Nagal, Tehsil Narnaul,
 District Mahendra Garh.
 (Vehicle Owner/Partner Tractor HRM 3577)
7. Hansraj S/o Shri Thanwar Ram, R/o Khatoli Ahir,
 Police Station Chaudhary Nagal, Tehsil Narnaul, Distt.
 Mahendra Garh.
(Driver Tractor No.HRM-3577)

----Appellants/Non-claimants

Versus

1. Smt. Prem Lata W/o Sh. Rajendra Prasad,
2. Nawal Kishore S/o Shri Rajendra Prasad,
3. Kumari Ganga Sharma D/o Sh. Rajendra Prasad,
4. Kumari Bheem D/o Sh. Rajendra Prasad Brahmin.
5. Bhagwan Sharma S/o Shri Rajendra Prasad Brahmin.
(4 & 5 are minors under the guardianship of mother Smt. Prem Lata)
 All R/o Basduda, District Rewari,
 Presently residing at Plot No.44, Robda Ka Kuwa, 60
 Feet Road, Daudpura, Alwar (Rajasthan).

सत्यमव जयते

----Respondents/Claimants

For Appellant(s) : Mr. Nalin G. Narain
For Respondent(s) : None

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND
Judgment

29/04/2022

Instant appeal has been filed against the impugned judgment and award dated 02.04.2002 passed by the Motor

Accident Claims Tribunal, Behror, District Alwar (for short 'the Tribunal') in Case No. 5/1993 whereby the Tribunal has awarded a sum of Rs. 1,45,500/- in favour of the claimants-respondents on account of death of Rajendra Prasad in an accident which occurred on 26.07.1992.

The Tribunal after framing the issues, evaluating the evidence available on the record and after hearing counsel for the parties decided the claim petition of the claimants-respondents.

Learned counsel for the appellants non-claimants submitted that the instant case is a case of 100% contributory negligence of the deceased and there was no negligence of the driver of the vehicle, but the Tribunal has erred in deciding this issue by holding that there was 50% negligence of the deceased and 50% negligence of the driver of the vehicle. Counsel further submitted that though charge-sheet was submitted against the driver of the vehicle under Section 304 A IPC but after trial he was acquitted from the charge, so it cannot be believed that there was at all any negligence on the part of the driver of the vehicle. So, the judgment dated 02.04.2002 passed by the Tribunal be quashed and set aside.

I have considered the submissions made at the Bar and gone through the impugned judgment and award dated 02.04.2002 passed by the Tribunal as well as relevant record of the case including the finding recorded by the Tribunal on issue Nos. 1 and 3.

Perusal of the record indicates that "X" is the place where the accident has occurred and "B" is the place where the head of the injured struck with the tractor trolley and "C" is the place where the motorcycle was found which is 5 feet away from the

place marked as "A" in the site plan. The site plan (Ex.3) indicates that when horn was blown by the deceased while plying the motorcycle, no side was given by the driver of the tractor and when the motorcycle came in front of the tractor, the accident occurred.

Bare perusal of the site plan and other evidence available on the record clearly indicates that it is a case of 50% negligence on the part of the deceased and 50% negligence on the part of the driver of the vehicle. Thus, no illegality has been committed by the Tribunal while fastening liability upon the appellants for payment of 50% of the amount towards the total amount of compensation determined by the Tribunal.

There is no force in the arguments raised by the counsel for the appellants that after trial the driver of the vehicle was acquitted from the charge under Section 304-A IPC.

It is a settled principle of law that in a criminal trial several considerations are there for passing the judgment but while deciding the claim petition the considerations are different. Hence, there is no illegality in the judgment and award passed by the Tribunal.

The appeal is devoid of merit and accordingly stands dismissed.

Stay application and all pending application(s), if any, also stand dismissed.

Record of the case be sent back to the Tribunal forthwith.

(ANOOP KUMAR DHAND),J